STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

SBC Communications Inc.,	**)**	
SBC Delaware Inc.,	**)**	
Ameritech Corporation,	**)**	
Illinois Bell Telephone Company		**)**
d/b/a Ameritech Illinois, and	**)**	
Ameritech Illinois Metro, Inc.	**)**	
	)	**Docket No. 98-0555**
Joint Application for Approval	**)**	
of the Reorganization of Illinois	**)**	
Bell Telephone Company d/b/a	**)**	
Ameritech Illinois, and the	**)**	
Reorganization of Ameritech	**)**	
Illinois Metro, Inc. in Accordance		**)**
With Section 7-204 of the Public		**)**
Utilities Act and for All Other	**)**	
Appropriate Relief	**)**	

APPLICATION FOR REHEARING
OF THE CITIZENS UTILITY BOARD

The Citizens Utility Board ("CUB"), through its attorney, pursuant to Section 10-113 of the Public Utilities Act ("the Act") and 83 Ill. Admin. Code Part 200.880, hereby moves for the Illinois Commerce Commission ("the Commission") to modify its Order entered September 23, 1999 in the above-captioned proceeding.

I. INTRODUCTION

As CUB has repeatedly pointed out in testimony and briefs filed throughout the more than 13 months this docket was pending, SBC Communications, Inc.,

SBC Delaware, Inc., Ameritech Corporation, Illinois Bell Telephone Company d/b/a Ameritech Illinois ("AI" or "the Company") and Ameritech Metro, Inc (collectively knows as "Joint Applicants") failed to sustain their burden of proving that the merger of SBC and Ameritech satisfied the statutory requirements of Section 7-204 of the Act. Nevertheless, on September 23, 1999, the Commission approved the merger, noting also that "conditions to our approval need to be imposed in order to protect the interests of the Company and its customers." Order at 239. Shortly thereafter, the Federal Communications Commission granted its approval of the merger. Both the Department of Justice and the Ohio Public Utilities Commission issued their endorsements of the merger earlier in the year.

Although CUB and other parties have painstakingly detailed in briefs how the record evidence shows that approval of the merger will diminish the quality and increase the rates of service AI provides to its captive monopoly customers, the Commission nevertheless concluded otherwise. Having obtained all of the necessary approvals from the various jurisdictions, it is clear to CUB that the merger train is out of the station and moving forward, despite the best efforts of consumer intervenors and potential competitors of the Joint Applicants to stop it in its tracks. In light of these facts, CUB's Application for Rehearing focuses on the Commission's flawed conclusions regarding the allocation of merger savings and the issue of whether AI's monopoly customers are adequately protected from

rate increases likely to be proposed

post-merger.[1] More to the point, the Commission's adopted methodology for allocating merger savings, a prerequisite of approving the consolidation under Section 7-204(c) of the Public Utilities Act ("the Act"), virtually ensures that AI's monopoly ratepayers, who have financed the development of AI's noncompetitive and competitive service network, are unlikely to receive a single dollar of merger savings rightly owed them.

Although the Commission's Order correctly rejects the Joint Applicants' position that Section 7-204(c) does not apply to price cap utilities (Order at 146), it concludes that ratepayers should wait until actual savings accrue, as defined by SBC/Ameritech, before any merger savings are allocated to ratepayers. (Order at 147). Further, the Commission concludes that this exercise should be made a part of Ameritech Illinois' ("AI") truncated annual price cap filing -- a three-month

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[1]**CUB's Application for Rehearing incorporates by reference all arguments presented in its Initial Brief, Reply Brief, Brief on Exceptions, Reply Brief on Exceptions, Initial Brief on Re-Opening and Brief on Exceptions on Re-Opening on the issues of how merger savings should be allocated (Section 7-204(c))and whether the proposed merger is likely to result in adverse rate impacts on retail customers (Section 7-204(b)(7)).**

proceeding that permits no filing of testimony, extremely limited discovery, no cross-examination of Company or Staff witnesses, and no hearings of any kind. The Commission's Order further concludes that only 50% of all merger-related savings should be allocated to ratepayers, once computed.

The vague methodology outlined in the Order is insufficient to allow an informed judicial review of the finding, and, therefore, is subject to remand by an appellate court under Section 10-201(e)(iii) of the Act. Moreover, the vaguely defined methodology denies ratepayers and other interested parties the opportunity for a full and fair hearing on the calculation of these sums. Further, the Commission's conclusion that ratepayers should only receive 50% of the reported savings based upon the notion that conditions imposed upon the merged company justify an amount less than 100%, is arbitrary and capricious, and unsupported by record evidence.

Finally, the Merger Order incorrectly concludes that residential ratepayers will not be harmed should the newly merged AI approach the Commission with a request for rate increases to its monopoly residential services. It does so by misinterpreting the Commission's Order in ICC Docket No. 92-0448/93-0239 ("Price Cap Order") governing AI's noncompetitive residential service rates, suggesting that residential ratepayers are protected from any proposed rate increases "until such time as this Commission votes to allow an increase". Order at 123. As will be discussed below, because of the expiration of the residential

rate cap on October 11, 1999, residential ratepayers are at risk for increases in basic residential service rates when AI makes its annual price cap filing next April. The Commission's conclusion that the merger will not place upward pressure on rates is flawed. Accordingly, the Commission's conclusion that Section 7-204(b)(7) of the Act has been satisfied is not supported by the record evidence.

CUB urges the Commission to grant a rehearing on these issues and modify its Order in accordance with the arguments presented below.

II. THE COMMISSION'S DECISION TO CALCULATE AND APPORTION MERGER SAVINGS IN THE PRICE CAP ANNUAL FILING PROCEEDINGS VIOLATES SECTION 7-204(C) OF THE ACT, IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE AND INCLUDES INSUFFICIENT ANALYSIS FOR AN INFORMED JUDICIAL REVIEW.

Section 7-204(c) of the Act requires the Commission to rule on (1) the allocation of any savings resulting from the proposed reorganization; and (2) whether the companies should be allowed to recover any costs incurred in accomplishing the proposed reorganization, and, if so, the amount of costs eligible for recovery and how the costs will be allocated. 220 ILCS 5/7-204(c).

However, the Commission's decision to calculate and then allocate savings achieved as a result of the SBC/Ameritech merger in the truncated price cap

annual filing proceedings makes the statutorily-prescribed allocation virtually impossible. The Commission's Order provides no detail as to how the calculation will be made within the context of this expedited proceeding, what evidentiary procedure will be followed, and the role a third party auditor will play in both calculating and presenting the savings information to the Commission.

The Commission cites two reasons for waiting until actual data, as opposed to estimates, are available for the computation of merger savings, costs and the reasonableness of those costs: (1) its "strong preference for dealing in matters of certainty" and (2) the disparity in savings estimates provided by Government and Consumer Intervenors' witness Dr. Lee Selwyn ($472 million annually over ten years) and SBC/Ameritech witness David Gebhardt ($31 million annually over three years). Order at 147. The Commission's Order then instructs SBC/Ameritech to track its share of all actual merger-related savings and all merger-related costs, as defined in the Order, separately for the period beginning on the date that the merger is consummated and ending on March 15, 2000. The Order further adopts Staff's recommended methodology of having the newly acquired Company submit this information as part of IBT's annual rate filing on April 1, 2000, and thereafter on an annual basis "until such time as an updated price cap formula has been developed." Order at 149. The Order further provides that the Commission shall retain, at the Joint Applicants' expense, a third party auditor, which may be a public accounting firm, to develop and establish

accounting standards to assist the Commission in identifying such costs and savings and to assist the Commission in tracking and determining the amount of such costs and savings. Id.

There are many reasons why this approach fails to satisfy the statutory mandate of Section 7-204(c). First, because the procedure envisioned for calculating the savings is so vaguely worded, the Commission's conclusion essentially permits SBC/Ameritech to shelter savings that the Commission and intervening parties are unlikely to uncover. Upon approval, this merger will create a behemoth entity made up of SBC/Southern New England Telephone Company/Pacific Telesis and now Ameritech. Illinois Bell's incumbent local exchange operations will make up12% of this corporate entity. While the Commission's Order argues that "a broad array of state and federal rules and procedures which address the allocation of costs between utility and non-utility affiliate activities" will protect ratepayers from improper cost allocation (Order at 37) and, accordingly, improper savings allocations, both the ability and incentive to hide savings within and among affiliates is enormous.

As noted in the Dissenting Opinion of Commissioner Ruth K. Kretschmer:

> **Incredible as it may seem, the majority's decision on the allocation of possible savings depends solely on the good graces of Ameritech not to bury or shift the savings and costs. If Ameritech Illinois can find a way to shift the savings to another jurisdiction or net its costs against the savings, then the customers will never see any benefit from this merger in the form of any allocations.**

Dissenting Opinion of Commission Ruth K. Kretschmer at 19. As Commissioner Kretschmer further noted, the Commission provides no guidance as to what will constitute legitimate costs of the merger -- an important omission given the Commission's decision to calculate savings owed to ratepayers by netting merger costs from savings. Items such as the "golden parachutes" regularly being awarded retiring Ameritech Illinois personnel in the wake of the merger, costs of re-locating Ameritech Illinois personnel to SBC-owned entities in Texas and other locations, and penalties invoked against the newly merged entity by the Commission should conditions and benchmarks not be met by SBC/Ameritech, are just a few of the examples of cost categories that may or may not be netted against any achieved savings. *See* Kretschmer Dissent at 20. These are questions that can and should have been answered in the Final Order, as required under Section 7-204(c). Yet such decision-making is conspicuously absent from the Commission's Order.

Even if such decisions could be forestalled until a later date, which they cannot, the Commission's vague procedural description of the savings allocation process likewise fails to satisfy the dictates of 7-204(c). Under the Commission's Order, savings, if any, would be tallied by SBC/Ameritech for the annual Price Cap filing -- a docket that permits no hearings, no cross-examination and very little discovery. Typically, the Company files its annual rate filing on April 1st, Comments from interested parties and Staff are due within five to six weeks,

Reply Comments are filed by the Company one to two weeks later, and a Proposed Order is issued shortly thereafter by a hearing examiner. Under the specific terms of the Price Cap Order, the Commission must take action in these proceedings and issue an Order adjusting rates for the following 12-month period by July 1st of each year. *See* ICC Docket No. 92-0448/93-0239, Order of October 11, 1994, p. 93. Thus, the Price Cap Order itself requires that the Commission set rates for the coming year on an annual basis by July 1st, thereby giving the Commission exactly three months from the Company's April 1st filing date to calculate the coming year's price cap formula and implement proposed price changes. Price Cap Order at 93. Accordingly, there will be little opportunity for discovery by consumer intervenors and other interested parties on the merger savings and cost amounts tallied by SBC/Ameritech and any third party auditor hired by the Commission. Moreover, no information is supplied in the Order as to when the auditor would begin tabulating costs and savings, whether the auditor would issue a report revealing its findings, whether the auditor will file written testimony discussing its findings, and whether the auditor's findings will be subject to discovery and cross-examination. The conclusion that a proper allocation of savings can be achieved in the procedural vehicle selected by the Commission is not supported by substantial evidence, contrary to Section 10-201(e)(iv)A of the Act.

As it exists today, the annual price cap filing is a truncated proceeding by

both design and necessity. One goal of the adoption of price caps regulation was to reduce the regulatory burdens of traditional rate of return regulation. The Commission specifically noted in its Order:

> **The plan reduces the economic burdens of regulation by eliminating cumbersome and costly rate case proceedings, by eliminating depreciation represcription proceedings, and by giving the Company the ability to change its prices without undue regulatory delay.**

Price Cap Order at 184. Despite this clear language, the Commission's Merger Order now adds the difficult and time-consuming process of sifting through the accounting records of the behemoth SBC/SNET/Pacific Telesis/Ameritech corporation and all its affiliates, to determine whether costs and savings associated with the merger have been appropriately accounted for, to the task of setting rates in the truncated price cap proceeding. Given the process selected and the details omitted by the Commission, CUB believes that such an undertaking is impossible. Accordingly, Section 7-204(c) of the Act has not been satisfied, as required for approval of the merger. The merger Order, therefore, is contrary to State law, and accordingly, Section 10-201(e)(iv)C of the Act. Moreover, the Order's vague discussion of the procedure to be employed in calculating future merger savings and costs lacks analysis sufficient to allow an informed judicial review, as required under Section 10-201(e)(iii) of the Act.

In addition, the record evidence shows that the merged entity does not expect to achieve positive savings, netted against merger costs, until the second year post-merger. Tr. at 465; Order at 140. The Commission's Order provides

that savings and cost figures tracked by the merged entity "will continue to be provided in Ameritech's annual price cap filings until such time as an updated price cap formula has been developed in Docket 98-0252." Order at 149. Certainly, the record evidence guarantees that consumers will not realize any cost savings in the April, 2000 and 2001 annual filings. Because the Commission's Order does not state whether or how the merger savings would be incorporated into any new price cap formula established in Docket No. 98-0252, it is likely that consumers may never see a pennys worth of savings reflected in rates. This glaring omission likewise fails to satisfy Section 7-204(c) and, therefore, 10-201(e)(iv)C of the Act. In addition, this conclusion lacks analysis sufficient to allow an informed judicial review, as required under Section 10-201(e)(iii) of the Act.

III. THE COMMISSION'S DECISION TO CALCULATE AND APPORTION MERGER SAVINGS IN THE PRICE CAP ANNUAL FILING PROCEEDINGS VIOLATES INTERVENORS' DUE PROCESS RIGHTS.

As noted above, the Commission's Order provides that savings, if any, would be tallied by SBC/Ameritech for the annual Price Cap filing -- a docket that permits very little discover, no hearings, no filing of testimony and no cross-examination of witnesses. This three-month truncated proceeding does not permit a full and fair hearing on the savings and costs reported by both

SBC/Ameritech and any auditor hired by the Commission. No party will have the opportunity to challenge the amounts reported by either entity in testimony or through cross-examination. Accordingly, intervenors' due process rights under the State and federal constitution will be violated, contrary to the dictates of Section 10-201(e)(iv)C of the Act.

Moreover, Section 10-103 of the Act requires all Orders issued by the Commission in proceedings, investigations or hearings conducted under the Act to be based on record evidence. 220 ILCS 5/10-103. As noted above, the Commission's description of the procedure to be followed for calculating merger costs and savings, and then awarding the net amount to consumers, lacks any framework or detail to ensure that decisions on savings in the annual price cap filing dockets will be based on record evidence. For example, currently no testimony is filed or cross-examined in the annual price cap filings before the Commission. Only the Company's filing, in which the Company submits its calculation of the annual price cap formula and the resulting adjustments in rates, along with the Comments and Reply Comments, Exceptions and Reply Exceptions, are made a part of the record of the proceeding. In addition, the Commission's selection of the truncated annual price cap filing dockets as the vehicle for computing savings suggests that critical information needed to make savings computations will not be made a part of the public record of the Commission, in violation of Section 10-101 of the Act.

In light of these statutory and constitutional infringements, the Commission's Order is contrary to Section 10-201(e)(iv)C of the Act.

IV. THE COMMISSION'S CONCLUSION THAT ONLY 50% OF MERGER SAVINGS SHOULD BE ALLOCATED TO RATEPAYERS IS FLAWED AND CONTRADICTS SECTION 7-204 OF THE ACT.

Having laid out a vague procedure for allocating savings, the Commission's Order then arbitrarily halves the amount of savings owed to ratepayers. The Commission concludes:

> **We further conclude on the arguments presented, that 50% of the net merger savings allocable to AI should be allocated to consumers using Staff's distribution methodology. This strikes a fair balance considering the commitment, performance and benchmark costs which will be incurred post-merger.**

Order at 148-149. The paragraphs proceeding this allocation make clear that, in part, the belief that certain conditions imposed by the Commission under Section 7-204(f), and commitments the Joint Applicants agreed to, carry both a benefit to ratepayers and an economic cost to the Company, and therefore justify a reduction in the amount of savings allocated to ratepayers. For example, the Commission notes:

> **Arguably, if there were no benefits whatsoever to the public from a reorganization where traditional regulation was operative, then a 100% allocation to customers might be proper. So too, if the residential rate freeze imposed through an alternative regulation plan were to remain in effect over the next 5 years, then a 100% allocation to shareholders would be appropriate. The situation here and the conditions we have determined**

reasonable to impose in this instance draw in some degree from both of these scenarios and thus, an adjustment to these ratios is warranted.

Order at 148. The Commission's conclusion on this point is flawed, not supported by substantial evidence and completely arbitrary, contrary to Section 10-201(e)(iv)A of the Act.

Ratepayers are entitled to 100% of the savings (net costs) -- no less. Ratepayers bear the risk of the merger leading to reduced service quality and increased prices. *See* CUB Initial Brief at 15-17; GCI Ex. 1.0 at 55-56. Whether or not a rate cap exists that was imposed through a previous Commission order in order to satisfy the dictates of Section 13-506.1 of the Act, the statute that provides the framework for approving alternative regulation plans, has nothing to do with the extent to which merger savings should be allocated to ratepayers. As Commissioner Kretschmer noted in her Dissent, AI's status as the monopoly local telecommunications service provider over the course of many decades resulted in the financing of the Company's network by its customers. Kretschmer Dissent at 20. Additionally, the record shows that Illinois Bell intrastate operations will be a significant source of resources to support the National/Local strategy in terms of personnel and captive monopoly service revenues. *See* SBC/Ameritech Ex. 1.1 (Kahan Rebuttal) at 57.

Nevertheless, the Commission whittled down the amount of savings owed to AI's ratepayers, apparently based on the fact that the Commission was also requiring the Company to satisfy specified benchmarks and conditions that

"each carries with it an economic cost." Order at 148. Presumably, then, the Commission appears to have concluded that the savings amount required to be allocated under Section 7-204(c) of the Act can and should be modified by any perceived costs associated with implementing conditions under Section 7-204(f) of the Act. This allocation methodology not only fails to provide sufficient analysis for a reviewing court, but also contradicts the plain meaning and dictates of Section 7-204 of the Act, which requires an allocation of savings under part (c) of this statute separate and apart from the imposition of any conditions the Commission may order under part (f) of the statute.

Illinois case law requires that when interpreting this Section of the Act or any other statutory provision, the cardinal rule of statutory construction, to which all other canons and rules are subordinate, is to ascertain and give effect to the true intent and meaning of the legislature. Solich v. George & Anna Portes Cancer Prevention Center of Chicago, Inc., 158 Ill.2d 76, 81, 630 N.E.2d 820, 822 (1994); Doe v. Masonic Med. Ctr., 297 Ill. App. 3d 240, 242, 696 N.E.2d 707, 709 (1st Dist. 1998). The best indication of the legislature's intent is the language of the statute. Id. Thus, when construing a statute, the plain language of the statute should control. Id. The lettered parts of Section 7-204, (a) through (f), establish distinct requirements for the Commission's review of merger petitions. The Commission's allocation of savings under part (c) cannot be diminished in part because of a separate decision to impose conditions.

Accordingly, the Commission's arbitrary decision to allocate 50% of the computed savings to ratepayers lacks sufficient analysis to allow an informed judicial review, contrary to Section 10-201(e)(iii) of the Act, is not supported by substantial evidence, contrary to Section 10-201(e)(iv)A of the Act, and violates Section 7-204, contrary to Section 10-201(e)(iv)C of the Act. The record evidence in this docket supports a finding that 100% of the merger savings, net costs, should be allocated to ratepayers.

V. THE COMMISSION'S CONCLUSION THAT 50% OF THE COMPUTED SAVINGS SHOULD BE ALLOCATED TO RATEPAYERS IS ARBITRARY, AND NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

As noted above, the Commission arbitrarily concluded that 50% of the savings allocable to AI should be allocated to ratepayers, and determined this to be a "fair balance considering the commitment, performance and benchmark costs which will be incurred post-merger." Order at 148-149. Aside from the fact that this violates Section 7-204 of the Act, the conclusion is not supported by substantial record evidence.

Specifically, a review of the 32 conditions imposed under Section 7-204(f) of the Act, as described at pages 239 through 260 of the Order, reveals no economic benefit to ratepayers. Although Condition (23) assesses penalties to be distributed to AI ratepayers for the Company's failure to achieve the service quality benchmark established in the Price Cap Order for the Out of Service Over 24 Hours standard, it does so "separate and apart from any annual rate reduction

resulting from the service quality component of the Company's Alternative Regulation Plan". Order at 24. It is arguable, therefore, that Section 4-203 of the Act, which provides that "(a)ll fines and penalties recovered by the State in any such action shall be paid into the State treasury to the credit of the general fund", prohibits the Commission from distributing any penalties to ratepayers. *See* 220 ILCS 5/4-203. Clearly, the economic benefit to ratepayers of this condition is questionable at best.

Moreover, even assuming such penalties could be awarded to ratepayers, such credits would only accrue if the Company fails to adhere to a standard they are already required to meet under the Price Cap Order. While the Commission's imposition of this penalty provision may serve as a deterrent to any Joint Applicant inclination to sacrifice residential customers' service quality in order to finance its National/Local strategy, the costs incurred by the Company to adhere to a benchmark they are already required to follow under the Price Cap plan should not be netted against merger savings. Given the fact that the Company may or may not incur specific costs associated with this condition and others invoking monetary penalties, no specific dollar value can be assigned to these conditions.

Finally, the Commission further provides in its Order that:

> **Except where termination dates are specifically established, all conditions set out below shall cease to be effective and shall no longer be binding in any respect three years after the Merger Closing Date.**

Order at 239. This conclusion provides yet another reason why the Commission's decision to offset a 100% savings allocation with presumed costs and benefits resulting from the imposition of conditions is not supported by the record evidence. Assuming the Commission's calculation of annual merger savings continues beyond this three-year period in some procedural form, no offset associated with presumed costs and economic benefits of the Commission-imposed conditions can be made thereafter. The Order's conclusion to allocate 50% of savings to ratepayers, however, does not account or adjust for the three-year limit on conditions. Again, the selection of the 50% figure is arbitrary, with no record evidence to support the Commission's derivation of this amount.

Accordingly, relying on any of the conditions for purposes of whittling away at a 100% savings allocation to ratepayers is not supported by record evidence, leaving the Commission's Order subject to court reversal under Section 10-201(e)(iv)A of the Act.

VI. THE COMMISSION'S CONCLUSION THAT THE MERGER SATISFIES SECTION 7-204(B)(7) IS ERRONEOUS AND NOT SUPPORTED BY RECORD EVIDENCE.

Section 7-204(b)(7) requires the Commission to make a finding that the proposed reorganization is not likely to result in any adverse rate impacts on retail customers. 220 ILCS 5/7-204(b)(7). One of the bases for the Commission's

conclusion that retail rates would not likely be adversely impacted by the proposed merger was its recognition that AI will remain subject to the Price Cap plan approved in ICC Docket No. 92-0448/93-0239. Order at 123. The Commission specifically notes in its Order that "(t)he Plan does not permit AI to raise residential noncompetitive services rates at this time." Id.

The problem with this rationale is revealed in the next few paragraphs of the Commission's Order, wherein the Commission notes that the rate cap on the residential basket expires in October, 1999 under the Price Cap Order, and its additional statement that "(w)e continue to have full authority to investigate any proposed rate increases for noncompetitive services." Id. The Commission cannot have it both ways. If the residential rate cap has expired, but the Price Cap plan is still in effect, as the Commission asserts, then any proposed rate increase to residential basket services presented in next April's annual price cap filing must be approved by the terms of the Price Cap Order, as long as the proposed increase does not exceed the percentage of change in the price cap index for that year over the previous year plus 2%. *See* Price Cap Order, Appendix A, paragraphs I.A.1, 2. Assuming a proposed increase falls within that range, the Commission lacks the authority under the Price Cap Order to "investigate any proposed rate" or reject the price change.

Both the Company and the Commission relied on the existence of the residential rate cap in the price cap plan to counter arguments presented by CUB and other intervenors that the purchase premium paid by SBC to Ameritech and the merged entity's National/Local investment strategy will place upward

pressure on monopoly service rates. *See* CUB Initial Brief at 9-27. For example, in rejecting CUB and other intervenor arguments on this point, the Commission writes in its Order:

> **Furthermore, after the merger, AI will remain subject to its Plan, which was approved by this Commission in Docket 92-0448. The Plan does not permit AI to raise residential noncompetitive services rates at this time.**

Order at 123. Given the Commission's assertion in the next sentence that the rate cap expires in October, 1999, the rationale that the rate cap will somehow protect monopoly customers from any rate increases the merged entity might propose rings hollow. Under this reasoning, monopoly ratepayers were protected from rate increases for all of three weeks. Moreover, given the existence of AI's rate rebalancing proceeding (ICC Docket No. 98-0335), in which the Company is seeking a significant increase to residential access rates, residential ratepayers are further at risk for rate increases, given the Commission's assumption that the rate cap has expired. In short, the Commission's conclusion that Section 7-204(b)(7) has been satisfied is not supported by substantial evidence, contrary to Section 10-201(e)(iv)A of the Act.

If the Commission's conclusion that the rate cap has expired is correct, then its conclusion that Section 7-204(b)(7) has been satisfied, in part due to the existence of the rate cap, is flawed. The Commission must revisit its analysis of whether the merger satisfies Section 7-204(b)(7) in light of this mistaken logic or extend the residential rate cap at least until it issues an Order in Docket No. 98-0252, the five-year review of the price cap plan, as a condition of merger

approval.

VIII. CONCLUSION

For all of the reasons stated above, the Commission should grant CUB's Application for Rehearing and modify its Order in accordance with the arguments presented above.

Respectfully submitted,

CITIZENS UTILITY BOARD

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